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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
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23117 75	590 06/28/2005		EXAM	EXAMINER		
	ANDERHYE, PC	TORRES, JOSEPH D				
901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			ART UNIT	PAPER NUMBER		
			2133			
			DATE MAIL ED: 06/29/2005			

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)		
09/643,983	FRENGER ET AL.		
Examiner	Art Unit		
Joseph D. Torres	2133		

Before the Filing of ar	n Appeal Brief	Examiner	Art Unit	
		Joseph D. Torres	2133	
The MAILING DATE of t	his communication appe	ears on the cover sheet with the c	correspondence add	ress
THE REPLY FILED <u>13 June 2005</u> FA	AILS TO PLACE THIS API	PLICATION IN CONDITION FOR A	LLOWANCE.	~
places the application in condit	timely file one of the follo ion for allowance; (2) a No	n the same day as filing a Notice of wing replies: (1) an amendment, aff otice of Appeal (with appeal fee) in o ce with 37 CFR 1.114. The reply mo	idavit, or other evider compliance with 37 C	ice, which FR 41.31; or (3)
a) \boxtimes The period for reply expires $\underline{3}$	months from the mailing date	e of the final rejection.		
no event, however, will the sta	tutory period for reply expire	Advisory Action, or (2) the date set forth later than SIX MONTHS from the mailing	g date of the final rejection	on.
TWO MONTHS OF THE FINA	L REJECTION. See MPEP 7			
Extensions of time may be obtained unde have been filed is the date for purposes o under 37 CFR 1.17(a) is calculated from: set forth in (b) above, if checked. Any rep may reduce any earned patent term adjus NOTICE OF APPEAL	of determining the period of extending the of the oly received by the Office late	dension and the corresponding amount shortened statutory period for reply origing than three months after the mailing da	of the fee. The appropri inally set in the final Office	ate extension fee ce action; or (2) as
	eal (37 CFR 41.37(a)), or a	in compliance with 37 CFR 41.37 n any extension thereof (37 CFR 41.3 ly must be filed within the time perio	7(e)), to avoid dismiss	sal of the
	filed after a final rejection	but prior to the date of filing a brief,	will not be entered by	
(a) They raise new issues the (b) They raise the issue of new issue of new issue of new issue of new issue.	at would require further co ew matter (see NOTE belo	nsideration and/or search (see NO	TE below);	
appeal; and/or				ine issues for
	CFR 1.116 and 41.33(a)).	corresponding number of finally rej	ected claims.	
4. The amendments are not in co	mpliance with 37 CFR 1.1	21. See attached Notice of Non-Co	mpliant Amendment (PTOL-324).
5. Applicant's reply has overcom6. Newly proposed or amended of): Ilowable if submitted in a separate,	timely filed amendme	nt canceling the
non-allowable claim(s). 7. For purposes of appeal, the pro				_
how the new or amended claim The status of the claim(s) is (or	s would be rejected is pro	vided below or appended.	ii be entered and an e	хріанацоп от
Claim(s) allowed: Claim(s) objected to:				
Claim(s) rejected: <u>1-11,13-16,1</u> Claim(s) withdrawn from consid		<u>2 and 53</u> .		
AFFIDAVIT OR OTHER EVIDENCE				
 The affidavit or other evidence because applicant failed to provue was not earlier presented. See 	vide a showing of good an	at before or on the date of filing a No d sufficient reasons why the affidav	otice of Appeal will <u>no</u> it or other evidence is	t be entered necessary and
 The affidavit or other evidence entered because the affidavit or showing a good and sufficient r 	r other evidence failed to d	a Notice of Appeal, but prior to the overcome <u>all</u> rejections under appear y and was not earlier presented. So	al and/or appellant fai	s to provide a
 The affidavit or other evidence REQUEST FOR RECONSIDERATIO 	e is entered. An explanatio			
11. The request for reconsideratio See Continuation Sheet.		ut does NOT place the application in	n condition for allowar	ice because:
12. Note the attached Information	Disclosure Statement(s).	(PTQ/SB/08 or PTO-1449) Paper N	lo(s)	
13. ☐ Other:	//30	SEPHTORRES		
	// PRIM	ARY EXAMINER	Joseph D. Torres, F	PhD
	///		Primary Examiner Art Unit: 2133	

U.S. Patent and Trademark Office PTOL-303 (Rev. 4-05)

Advisory Action Before the Filing of an Appeal Brief

Part of Paper No. 20050624



Continuation of 11. does NOT place the application in condition for allowance because: The Applicant contends, "This is quite apparent, even viewing Ward's Fig. 3A in which 'arrows' from Table 28 are directed to every one of the processing blocks, indicating that each operation performed is dynamically adjustable depending upon the current channel condition".

The Examiner asserts that is a complete mischaracterization of Figure 3A of Ward in that it implies that the switching of all processors in Figure 3A of Ward must respond to channel conditions. The Abstract in Ward explicitly states, "The system continuously monitors radio channel quality on both the uplink and the downlink, and dynamically adapts the system's combination of speech coding, channel coding, modulation, and number of assignable time slots per call to optimize voice quality for the measured conditions", which means exactly what it says that the particular processing of a processing unit need not be changed responsive to channel conditions. Table II in col. 9, lines 5-15 of Ward clearly spells this out. In the case that channel conditions require a switch from type 2 to type 3 communications or vice a versa the speech coder does not switch its encoding rate, but maintains its coding rate, that is, under certain channel conditions the speech encoder maintains its particular mode of operation independent of the channel condition at that time. Table II in col. 9, lines 5-15 of Ward explicitly teaches that during switching from type 2 to type 3 communications, the speech preprocessing coder 21 in Figure 3A operates identically to a Prior Art speech preprocessing coder 21 in Figure 3 in Ward and the operation of speech preprocessing coder 21 in Figure 3A during switching from type 2 to type 3 communications does not depend on channel conditions.

Furthermore, only the switching of speech pre-processing depends on channel conditions. The actual pre-processing of speech never depends on channel conditions since LDCELP, ADPCM, VSELP and EVCELP encoders preprocess speech data according to specific algorithms to produce speech-encoded data independent of channel conditions. That is, only the switching of pre-processing units in Figure 3A of Ward can be dependent on channel conditions (Note: as shown above switching of pre-processing units can also be independent of channel conditions), the actual LDCELP, ADPCM, VSELP and EVCELP preprocessing algorithms used to produce speech encoded data and implemented by speech preprocessing coder 21 in Figure 3A do not depend on channel conditions.

The Applicant contends, "There is no disclosure or suggestion in Ward that some operations not be performed before the channel condition is determined".

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Nowhere does claim 1 recite, "performed before the channel condition is determined". Claim 1 only recites, "wherein the pre-processing does not depend on the current channel condition".

The Applicant contends, "This Ward never discloses, explicitly or 'inherently,' pre-processing data packets including performing a first coding operation on those data packets independently of the current channel condition".

The actual pre-processing of speech never depends on channel conditions since LDCELP, ADPCM, VSELP and EVCELP encoders preprocess speech data according to specific algorithms to produce speech-encoded data independent of channel conditions. That is, only the switching of pre-processing units in Figure 3A of Ward can be dependent on channel conditions (Note: as shown above switching of pre-processing units can also be independent of channel conditions), the actual LDCELP, ADPCM, VSELP and EVCELP preprocessing algorithms used to produce speech encoded data and implemented by speech preprocessing coder 21 in Figure 3A do not depend on channel conditions.

In addition, Figure 3 in Ward is an explicit teaching whereby speech coder 21 cannot be switched before the actual preprocessing so even the switching or the lack thereof in Figure 3 is independent of channel conditions.

The Applicant contends, "That Ward could possibly be modified so that the speech coder 21 is not adjustable based upon current channel conditions is no where disclosed or suggested in Ward".

The Examiner would like to point out that the Applicant's argument makes no sense since adjustable, adaptable, amendable and modifiable are all synonyms basically meaning the same thing. Furthermore col. 8, lines 65-67 in Ward teach that Table II in col. 9, lines 5-15 of Ward is only an example for using the adaptive mechanisms in Figure 3A. Col. 10, lines 30-35 in Ward clearly suggest various changes and modifications still fall within the scope of the teachings in the Ward patent. Not only is an adaptive device modifiable, but also Ward clearly suggests modifications to the adaptive device and clearly states that such changes fall within the scope and the spirit of Ward's intended teachings..